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No. 76-294

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOHN R. JONES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner, an inmate in the United States Penitentiary in Atlanta, Georgia, was attacked and injured by an unknown inmate. He brought suit against the United States in the United States District Court for the Southern District of Florida under the Federal Tort Claims Act, alleging that his jailers had breached their duty of care towards him by allowing the attack to occur.

The district court, after trial, held that the government had not been negligent, finding that petitioner had made no showing that the prison guards were "on notice of any real possibility or probability of physical danger to [petitioner] * * * " (Pet. App. 2). The court of appeals affirmed in an opinion on which we rely (Pet. App. 4-8).

Petitioner contends (Pet. 6-7) that government jailers should be held accountable for injuries to prisoners

regardless of whether they were aware of potential violence. The court of appeals correctly held (Pet. App. 6), however, that "[t]he government is not an insurer of the safety of a prisoner," but rather must meet a standard of ordinary care. *Fleishour* v. *United States*, 244 F. Supp. 762 (N.D. Ill.); *Muniz* v. *United States*, 280 F. Supp. 542 (S.D. N.Y.); *Williams* v. *United States*, 384 F. Supp. 579 (D. D.C.).[1] The court pointed out (Pet. App. 7) that the prison officials in this case had no notice that petitioner was in danger or that a potentially hazardous situation existed. The court therefore agreed with the district court that no negligence on the part of the government had been established. These rulings were correct and do not merit further review.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.

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[1]This Court has explicitly repudiated "absolute liability" as a basis for recovery of damages under the Federal Tort Claims Act. *Dalehite* v. *United States*, 346 U.S. 15, 45.